

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Maurice L. Dunbar,

Plaintiff,

vs.

D. Adedokun, Program Coordinator, SCDC;
N. Frierson, Oversight Coordinator, SCDC;
Ms. Washington, Director ATU, Lee Correctional
Institution; and SCDC State Class,

Defendants.

) C/A No. 2:12-351-JFA-BHH

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) REPORT AND RECOMMENDATION

) (partial summary dismissal)

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This is a civil action filed *pro se* by a state prison inmate.¹

BACKGROUND INFORMATION

In the Complaint filed in this case, Plaintiff alleges that he is improperly being forced to attend a "voluntary" program that is only offered at Lee Correctional Institution, a level-three yard. He alleges that he was doing fine at a lower level yard, Manning Correctional Institution, working in prison employment before he was "forced" to transfer to Lee to attend this Addiction Treatment Unit (ATU) program. According to Plaintiff it is a voluntary program unless the prisoner was court-ordered to attend, which Plaintiff says he was not. He names three individual South Carolina Department of Corrections (SCDC) employees and the "SCDC State Class" (Classification Department) as Defendants.

¹ Pursuant to 28 U.S.C. §636(b)(1), and D.S.C. Civ. R. 73.02(B)(2)(e), this magistrate judge is authorized to review all pretrial matters in such *pro se* cases and to submit findings and recommendations to the District Court. See 28 U.S.C. § § 1915(e); 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).

Plaintiff alleges that he is being threatened with prosecution of prison disciplinary violation charges if he keeps trying to get out. He alleges that Defendants improperly raised his classification level so that he could be forced to stay on the Lee yard even though he does not want to be in the program. Finally, he alleges that while the program is operating, Defendants will not allow prisoners to go into their rooms and make the prisoners go to the bathroom in a shower. Plaintiff asks for \$ 50,000.00 in damages from each Defendant and for an investigation into the allegedly cruel and unusual conditions of his confinement at Lee Correctional Institution.

INITIAL REVIEW

Under established local procedure in this judicial district, a careful review has been made of Plaintiff's *pro se* Complaint filed in this case. This review has been conducted pursuant to the procedural provisions of 28 U.S.C. § § 1915, 1915A, and the Prison Litigation Reform Act of 1996, and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995)(*en banc*); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983); *Boyce v. Alizaduh*, 595 F.2d 948 (4th Cir. 1979).

Pro se complaints are held to a less stringent standard than those drafted by attorneys, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89 (2007). When a federal court is evaluating a *pro se* complaint, the plaintiff's allegations are assumed to be true. *De'Lonta v. Angelone*, 330 F. 3d 630, 630n.1 (4th Cir. 2003).

Nevertheless, the requirement of liberal construction does not mean that this court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990). However, even under this less stringent standard, the Complaint filed in this case is subject to partial summary dismissal as to Defendant "SCDC State Class" under the provisions of 28 U.S.C. § 1915(e)(2)(B).

DISCUSSION

The Complaint should be partially dismissed insofar as it relates to Defendant "SCDC State Class" because this name for a party does not identify an actual "person" as required to state a viable claim for damages arising from Plaintiff's conditions of confinement. In order to state a claim for relief under 42 U.S.C. § 1983,² an aggrieved party must sufficiently allege that he or she was injured by "the deprivation of any [of his or her] rights, privileges, or immunities secured by the [United States] Constitution and laws" by a "person" acting "under color of state law." See 42 U.S.C. § 1983; see *generally* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1230 (2002).

It is well settled that only "persons" may act under color of state law, therefore, a defendant in a § 1983 action must qualify as a "person." For example, several courts have held that inanimate objects such as buildings, facilities, and grounds do not act under color of state law. See *Preval v. Reno*, 57 F. Supp. 2d 307, 310 (E.D. Va. 1999)("[T]he Piedmont

² Plaintiff's Complaint is properly before this Court pursuant to 42 U.S.C. § 1983. Section 1983 is the procedural mechanism through which Congress provided a private civil cause of action based on allegations of federal constitutional violations by persons acting under color of state law. The purpose of § 1983 is to deter state actors from using badge of their authority to deprive individuals of their *federally guaranteed* rights and to provide relief to victims if such deterrence fails.

Regional Jail is not a ‘person,’ and therefore not amenable to suit under 42 U.S.C. § 1983.”); *Brooks v. Pembroke City Jail*, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989) (“Claims under § 1983 are directed at ‘persons’ and the jail is not a person amenable to suit.”). Additionally, use of the term “staff” or the equivalent as a name for alleged defendants, without the naming of specific staff members, is not adequate to state a claim against a “person” as required in section 1983 actions. See *Barnes v. Baskerville Corr. Cen. Med. Staff*, No. 3:07CV195, 2008 WL 2564779 (E.D. Va. June 25, 2008).

Plaintiff’s use of the term “SCDC State Class” to identify a party defendant is equivalent to the use of the collective term “staff” in the *Barnes* case cited above. Although not completely clear, it appears from the totality of the pleading that Plaintiff is attempting to sue the entire Classification Department of SCDC. While that department probably has a “staff” of several persons, as shown in *Barnes*, use of a collective term to try to cover everyone in a work group is not proper in § 1983 cases. If Plaintiff wishes to sue one or more members of the Classification Department, he must specifically identify and name each individual member he wishes to make a party defendant.

RECOMMENDATION

Accordingly, it is recommended that the District Court partially dismiss the Complaint in this case *without prejudice* as to Defendant “SCDC State Class.” See *Denton v. Hernandez*; *Neitzke v. Williams*; *Haines v. Kerner*; *Brown v. Briscoe*, 998 F.2d 201, 202-04 (4th Cir. 1993); *Boyce v. Alizaduh*; *Todd v. Baskerville*, 712 F.2d at 74; see also 28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal). The Complaint should be served on the remaining Defendants.

Plaintiff's attention is directed to the important notice on the next page.

s/Bruce Howe Hendricks
United States Magistrate Judge

April 13, 2012
Charleston, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).